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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,191	12/15/2003	Robert A. Rowland III	17090.002001	4366

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EXAMINER

GIBSON, ROY DEAN

ART UNIT PAPER NUMBER

3739

DATE MAILED: 08/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/736,191

Applicant(s)

ROWLAND, ROBERT A.

Examiner

Roy D. Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-19 and 21-24 is/are rejected.
- 7) ☒ Claim(s) 6, 20, 25 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Claim 15 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 15 repeats the "positioning element" added to claim 8 in the most recent amendment.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 7, 18-19 and 21-24 rejected under 35 U.S.C. 102(e) as being anticipated by Azar (US 2004/0167498).

As to claim 1, Azar discloses a method for treating acne (caused by an infection), therefore, inherently inhibiting an infection, comprising the steps:

(a) disposing a surface of a heat transfer element (surface of a laser or optical fiber) in close proximity (how close ?) to a suspected area of infection;

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(b) causing a rapid temperature change in the suspected area of infection by irradiating the skin with pulses of light (10-100 msec at a fluence of 10-100 Joules/sq. cm in order to reach a predetermined temperature);

(c) discontinuing the causing of the rapid temperature change; and

(d) assessing the suspected area for occurrence of infection (determine if the hair is removed, thus the acne related structures are at least partially destroyed and [0099-0109] , [0113-0117] and [0129]).

Further to claims 4-5, it would be inherent in the method to ask the patient if any discomfort is realized and the level of the discomfort.

Further to claim 7, it would be inherent in the method to repeat steps (a) –(c) if step (c) indicates that infection may still occur.

Note that “close proximity” is not well defined and does not necessarily mean touching the target tissue. The heat from the laser does not heat the air surrounding the hair and then the hair by conduction, but by direct energy transfer to the hair by electromagnetic radiation.

Claims 8-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Macher et al. (6,066,164).

As to claims 8-9, Macher disclose a heating device comprising:

a heat transfer element (Figure 1, # 2) which can be positioned on the skin of a patient by the cable serving as a “handle” or means to hold and position the device; and

a thermal energy source (heater #3) for altering a temperature of the surface of the heat transfer element until a predetermined temperature is reached and wherein the source forms an integral unit with the heat transfer element (col. 4, line 4-col. 7, line 31).

As to claims 10-12, Macher et al. further disclose the surface of the heat transfer element is configured to a shape of a target area; further comprising a temperature detector (sensor #36) which regulates activation of the thermal energy source.

As to claims 13, Macher et al. further disclose at least one input from the external power supply.

As to claims 14-17, Macher et al. further disclose and insulating element (21), a positioning element (Figure 3, # 4) for gripping the device, and wherein the thermal energy source is separately replaceable, and wherein the thermal energy source includes an input for renewal of at least one component of the thermal energy source (a means to replace the heater #3 and col. 4, line 4-col. 7, line 31).

Note that the phrase in the beginning of claim 8, i.e., an apparatus for inhibiting infection, is merely intended use and the device of Macher et al. is fully capable of meeting the claim limitations.

Claims 8-17 are also rejected under 35 U.S.C. 102(b) as being anticipated by Nazerian (6,235,049).

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Nazerian discloses a heat transfer element with as a surface positioned against (close proximity) to tissue; a positioning element (straps with VELCRO fasteners); and a thermal energy source (heater # 7) for altering a temperature of the surface of the heat transfer element until a predetermined temperature is reached and wherein the source forms an integral unit with the heat transfer element, wherein the heat transfer element is configured to a shape of a target tissue; and a temperature sensor (10) which controls via feedback to a controller, thus activation and disconnection of the heater; an insulating element (14); and inherently wherein the thermal energy source is separately replaceable and includes an input for renewal of at least one component (a means to replace the heater #3 and_col. 1, lines 10-12, col. 2, line 65-col. 4, line 7).

Allowable Subject Matter

Claims 6, 20, 25 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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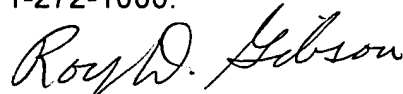
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Roy D. Gibson
Primary Examiner
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July 24, 2006